

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

50949

FILE: B-184779

DATE: September 16, 1975 97517

MATTER OF: Technology Incorporated

DIGEST:

1. Protest that low bidder is not small business is not for consideration by GAO as SBA decision on size is conclusive and may not be ignored.
2. Contention that bidder will violate ASPR §§ 7-104.14(a) and (b) by subcontracting major portion of contract to large business is matter of contract administration and not for consideration by GAO, as regulation requires that "contractor" subcontract maximum amount practicable to small business concern, not "bidder."
3. GAO does not review protests against affirmative determinations of responsibility unless either fraud is alleged on the part of procuring officials or where solicitation contains definitive responsibility criteria which allegedly have not been applied.
4. Questions concerning contractor's qualification as "manufacturer" or "regular dealer" under Walsh-Healey Act are for consideration by Department of Labor.

Technology Incorporated (Technology) has protested the award of a contract under solicitation No. F41608-75-0651, issued at Kelly Air Force Base, Texas, to Page Airways, Inc. (Page).

Technology contends that Page (1) is not a small business concern; (2) intends to subcontract a major portion of the work to be performed under the contract to a large business; (3) is not a responsible bidder and (4) is not a manufacturer or regular dealer under the Walsh-Healey Act.

Regarding the first contention that Page is not a small business, such a determination is a matter for the Small Business Administration (SBA). We have held under 15 U.S.C. § 637(b)(6) (1970)

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that a decision of the SBA on the size status of a firm is conclusive and may not be ignored by our Office. Chemical Technology, Inc., B-182192, March 12, 1975, 75-1 CPD 149. Moreover, Technology has apparently protested the small business status of Page in accordance with the procedures provided in the Armed Services Procurement Regulation (ASPR) §§ 1-703(1) and (3) (1974 ed.) for protests and appeals.

Concerning the allegation that Page intends to disregard ASPR §§ 7-104.14(a) and (b) (1974 ed.) by subcontracting a major portion of the contract to a large business, we note that the cited regulation provides that the "Contractor agrees to accomplish the maximum amount of subcontracting to small business concerns that the Contractor finds to be consistent with the efficient performance of this contract."


Since the requirement is only imposed on the contractor, as distinguished from bidders, the question whether Page is or will be accomplishing a "maximum amount of subcontracting to small business concerns" is a matter of contract administration for the Air Force, and not GAO, to consider. PSC Technology, Inc., B-183648, May 27, 1975, 75-1 CPD 316.

With regard to the allegation that Page is not a responsible bidder, this Office does not review protests against affirmative determinations of responsibility, unless either fraud is alleged on the part of procuring officials or where the solicitation contains definitive responsibility criteria which allegedly have not been applied. See Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Affirmative determinations are based in large measure on subjective judgments which are largely within the discretion of procuring officials who must suffer any difficulties experienced by reason of a contractor's inability to perform. However, we will continue to consider protests against determinations on nonresponsibility to provide assurance against the arbitrary rejection of bids except we will not ordinarily review those cases which are properly for consideration by SBA under its Certificate of Competency procedures. Dyneteria, Inc., B-175701, July 15, 1975, 75-2 CPD 36.

Finally, the allegation concerning whether Page qualifies as "manufacturer" or "regular dealer" under the Walsh-Healey Act is a matter for consideration by the Department of Labor, not our Office. See Environmental Elements Corporation, B-182363, March 26, 1975, 75-1 CPD 179.

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Accordingly, the protest of Technology is not for consideration.


Deputy Comptroller General
of the United States